NASHARUDDIN NASIR

v.

KERAJAAN MALAYSIA & ORS (NO 2)

HIGH COURT MALAYA, SHAH ALAM
SURIYADI HALIM OMAR J
[CRIMINAL APPLICATION NO: 44-11-2002]
8 NOVEMBER 2002

PREVENTIVE DETENTION: *Internal Security Act - Detention - Validity of - Internal Security Act 1960, s. 73(1)(a), (b), (2), (3) - Whether police officers who extended suspect's detention under s. 73(3) satisfied requirements of s. 73(1)(a) & (b) - Whether 'specific purpose' for extension of detention identified - Whether arresting officer had sufficient reasons to believe that suspect had acted or was about or likely to act in a manner prejudicial to security of Malaysia - Non-applicability of s. 16 to s. 73 - Whether detention order subsequently issued under s. 8 affected - Habeas corpus ad subjiciendum*

PREVENTIVE DETENTION: *Internal Security Act - Detention order - Internal Security Act 1960, s. 8 - Extension of suspect's detention under s. 73(3) defective for non-compliance of s. 73(1)(a) & (b) - Whether subsequent detention order issued by Minister under s. 8 also rendered defective*

Nasharuddin Nasir ('the applicant') was arrested and detained by the police under s. 73(1) of the Internal Security Act 1960 ('ISA') and thereafter further detained under s. 8 thereof. He filed an application praying for: (i) an order of the court allowing him to have access to his solicitors and (ii) the writ of *habeas corpus.* The High Court heard and granted his first prayer, *ie,* for access to legal representation (*Nasharuddin Nasir v. Kerajaan Malaysia & Ors* [2003] 1 CLJ 345). The instant judgment was in respect of his second prayer, *ie,* for the writ of *habeas corpus.*

Held:

[1] The affidavits affirmed by the police officers who authorised the extension of the applicant's detention under s. 73(3) of the ISA failed to show that the said officers had satisfied the mandatory requirements of s. 73(1)(a) and (b) thereof. The grounds for extending the applicant's detention, as deposed in the said affidavits, were also beyond the scope of s. 73(3) of the ISA. The said officers had justified the extension

of the applicant's detention, purportedly under s. 73(3) of the ISA, based upon irrelevant considerations such as the elements of s. 73(2) of the ISA. The purported extension of the applicant's detention under s. 73(3) of the ISA was therefore flawed. (pp 358 h, 359 a-b, g-h, 360 c & 361 a-g)

[2] The 'specific purpose' for the extension of the applicant's detention under s. 73(3) of the ISA was not identified and set out; this was a violation of s. 73(1) of the ISA and was a fatal flaw. (p 361 h & 362 a-f)

[3] The affidavit of the arresting officer showed that the objective requirements of s. 73(1)(b) of the ISA were not fulfilled. There were no material particulars to indicate that the said officer had sufficient reasons to believe that the applicant had acted or was about or likely to act in a manner prejudicial to the security of Malaysia. This was so notwithstanding the fact that the requirements of s. 73(1)(a) of the ISA were satisfied. (p 363 h & 364 a)

[4] The right of non-disclosure under s. 16 of the ISA does not apply in respect of s. 73 of the ISA. (p 364 d)

[5] The detention order subsequently issued by the Minister under s. 8 of the ISA was also defective as it was based on the wrongful detention of the applicant under s. 73(1) and (3) thereof. (p 364 e)

[Habeas corpus issued.]

Case(s) referred to:

Andrew Thamboosamy v. Superintendent of Pudu Prison [1976] 2 MLJ 156 ***(refd)***

Inspector General of Polis v. Tan Sri Raja Khalid Raja Harun [1988] 1 CLJ 39; [1988] 1 CLJ (Rep) 135 ***(refd)***

Mohamed Ezam Mohd Noor v. Ketua Polis Negara & Other Appeals [2001] 3 CLJ 198 ***(refd)***

Mohamed Ezam Mohd Nor v. Ketua Polis Negara & Other Appeals [2002] 4 CLJ 309 ***(foll)***

Nasharuddin Nasir v. Kerajaan Malaysia [2003] 1 CLJ 345 ***(refd)***

Nik Adli Nik Abdul Aziz v. Ketua Polis Negara [2002] 1 CLJ 161 ***(refd)***

PP v. Koh Yoke Koon [1988] 2 MLJ 301 ***(refd)***

Theresa Lim Chin Chin & Ors v. Inspector General of Police [1988] 1 MLJ 293; [1988] 1 LNS 132 ***(refd)***

Tan Hoon Seng v. Minister for Home Affairs, Malaysia & Anor [1990] 1 CLJ 423; [1990] 1 CLJ (Rep) 271 ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 366
Federal Constitution, art. 151
Internal Security Act 1960, ss. 8, 16, 73(1)(a), (2), (3)

For the applicant - En Sivarasa (Ranjit Singh & KY Ho); M/s Saiful Kasri & Assoc
For the respondents - Kamaluddin Mohd Said

Reported by Gan Peng Chiang

JUDGMENT

Suriyadi Halim Omar J:
On 17 April 2002 the applicant was arrested by a police officer under s. 73(1) of the Internal Security Act 1960 (hereinafter referred to as the Act), followed in its wake on 12 June 2002 by a s. 8 detention order. The second respondent had signed that order (hereinafter interchangeably referred to as the impugned order). Departing from the norm, before the Minister had issued that impugned order the applicant had filed an action, among others, praying for the right of access by his counsel and the substantive order of *habeas corpus*. Due to the exigencies of the moment, the parties had agreed at the outset that the former prayer was to be dealt with first, followed at the appropriate time by the *habeas corpus* application. After hearing both parties, I had concluded that as the applicant had successfully proved that the police had indeed acted in a *mala fide* manner, the applicant thus was entitled to meet his solicitors, to pave the way for them to discharge their duties effectively (*Nasharuddin bin Nasir v. Kerajaan Malaysia* [2003] 1 CLJ 345). For easy reference I will refer to that pronouncement as the first order.

On 1 November 2002 the sequel to the above application was canvassed before me, this time for the unfinished business of the *habeas corpus* application. Before proceeding with the hearing, in no uncertain terms I had posed the question to the learned senior federal counsel whether he objected to my hearing of the application, bearing in mind that I had formulated certain strong views previously. It was necessary, as at the back of my mind I was conscious that there was every possibility of those views being a cause for concern for the respondents, and a possible ground of appeal by either party. The respondents could allege that with those views breathing behind their backs, they would thus have an additional burden to surmount in the course of the hearing. The applicant could likewise allege that as I had found the police to have misbehaved the natural thing for me to do was to issue the *habeas corpus* order. The fact that the impugned order was founded on that original arrest, as the applicant was

never released and rearrested, was of no help either to my fears. Despite his initial hesitancy he finally acceded to my presiding over the case, hence this judgment.

To clear the air, I must state at the outset that even though the first order was not in favour of the respondents, it does not necessarily follow that a *habeas corpus* order must follow in its wake. This is so as it cannot be said that the questionable behavior of the police on its own was sufficient to render the legal status of the detention unlawful. I take solace from the views of Siti Norma Yaakob FCJ in *Mohamed Ezam Mohd Nor v. Ketua Polis Negara & Other Appeals* [2002] 4 CLJ 309 FC where Her Ladyship at p. 389 g opined:

> A complaint by a person while under lawful detention that he has been refused access to counsel contrary to the second limb of Article 5(3) will not have the effect of rendering his detention unlawful and that *habeas corpus* is not the proper remedy. It would be otherwise if for example there has been a failure to inform the person arrested of the grounds of his arrest, contrary to the first limb of Article 5(3) and such failure would render his subsequent detention unlawful. Clearly it is the legal status of the detention that determines whether *habeas corpus* can issue to secure the freedom of a detained person as guaranteed by Article 5(2) of our Federal Constitution.

After I had meted down the first order, sometime on 6 September 2002 the law of *habeas corpus* saw a radical shift on certain legal aspects, resulting in my appreciation of the law having to be overhauled and streamlined, so as to be in tandem with changing times. The case that resulted in those significant changes which, by necessity, require some serious comment is *Mohamed Ezam Mohd Nor v. Ketua Polis Negara & Other Appeals* [2002] 4 CLJ 309 FC. Suffice if I merely summarize below the relevant portion that have undergone changes, and which may affect the outcome of the current case, *viz.*:

1. In the exercise of discretion under s. 73(1) of the Internal Security Act 1960, the objective test is the order of the day, with that application of discretion being reviewable by a court of law. The subjective test thus now has been relegated to the recycle bin.

2. Under certain circumstances ss. 73(1) and 8 of the Act may operate independently of each other, and as such they cannot be said to be "inextricably connected", thus departing from the cases of I*nspector General of Polis v. Tan Sri Raja Khalid Raja Harun* [1988] 1 CLJ 39; [1988] 1 CLJ (Rep) 135 and *Theresa Lim Chin & Ors v. Inspector General of Police* [1988] 1 MLJ 293; [1988] 1 LNS 132.

3. The subjective test which applies to the Minister when signing any s. 8 order remains intact according to Steve Shim CJ (Sabah & Sarawak).

4. The provisions of s. 16 of the Act are expressly applicable only in relation to Chapter 11, Part 11 of the Act and does not apply to s. 73, which falls under Part IV.

5. In relation to s. 73(1)(a), the grounds of detention are not barred from disclosure to the detainee as opposed to the facts, upon which the detention order is based pursuant to cl. (3) of art. 151 of the Constitution. The grounds to be given by the detaining authority need merely consist of general information and not the evidential details, more relevant to allegations of fact. For purposes of judicial review, and in the context of this issue, there is no constitutional provision that prohibits the disclosure of information concerning matters of national security to courts. Only the detainee is barred from that information.

I now proceed with the legal dissertation, and for purposes of easy reference, herewith reproduce s. 73(1). It reads:

(1) Any police officer may without warrant arrest and detain pending enquiries any person in respect of whom he has reason to believe:

(a) that there are grounds which would justify his detention under s. 8; and

(b) that he has acted or is about to act or is likely to act in a manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof (hereinafter referred to as the specific purpose).

In a gist, for an arrest and detention of a person without warrant to be effective under the abovementioned provision, that exercise must be pursuant to pending enquiries, coupled with that arresting police officer having reasons to believe that there are grounds which would justify that arrested person's detention under s. 8, and that the latter has acted or is about to act or is likely to act in a manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof (the specific purpose).

If I may side track slightly, under s. 8 (for purposes of this poser, to be read together with s. 73(1)(a)) the Minister's order is issued deliberately with a view to preventing him from acting in a manner prejudicial to the

security of Malaysia. It may thus be construed that that order by the Minister is preventive and ingrained with a futuristic consideration in mind. Section 8 reads:

(1) If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, he may make an order (hereinafter referred to as the detention order) directing that that person be detained for a period not exceeding two years.

Section 73(1)(b) on the other hand provides that the arresting officer, *inter alia*, must have reasons to believe that that detainee has "acted ... in a manner prejudicial to the security of Malaysia." It must, by literal construction of the provision, logically follow that the detainee has already done some harm to the security of Malaysia. Despite that heavy burden imposed by the requirements of s. 73(1), full satisfaction of them will make that arrest and detention beyond reproach.

Under the scheme of sub-s. (3) of s. 73, any person arrested under this section may be detained for a period not exceeding sixty days without an order of detention having been made in respect of him under s. 8, subject to certain conditions. The conditions will be that:

a) he shall not be detained for more than twenty-four hours except with the authority of a police officer of or above the rank of Inspector;

b) he shall not be detained for more than forty-eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent; and

c) he shall not be detained for more than thirty days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General in that behalf, who shall forthwith report the same to the Minister.

The above preconditions on the other hand, on its face, are seemingly silent as to whether the Inspector, Assistant Superintendent, Deputy Superintendent, designated officer or Inspector-General (hereinafter referred to as the respective extending senior officers) must likewise be in possession of those reasons as provided for under s. 73(1)(a) and (b) before authorizing the extensions. To mechanically extend the detention periods provided for by their respective powers, without applying their minds would certainly militate against the tenets of *habeas corpus* law. The obvious

stepping up and involvement of an increasing number of senior officers in the exercise must surely mean that the factors of application of mind, check and balance, and supervision cannot be discounted. Furthermore, the opening words of "may be detained" rather than "shall be detained" under s. 73(3), fortifies my view that it endows the relevant officers with discretion, which requires the application of the mind, whether to authorize the extension or otherwise. If a Minister of Home Affairs were not permitted to nonchalantly sign a detention order without more, surely too that spirit and argument must apply equally to the matter under discussion. Having considered all those factors, I am fully convinced that it is statutorily essential that those officers be subject to the requirements of s. 73(1).

An intense scrutiny of s. 73(1) will reveal that Parliament had consciously differentiated the relevant personnel to 'any police officer' and the respective extending senior officers, with the former to include a reserve officer, an auxiliary police officer and a police officer appointed in accordance with any written law for the time being in force (s. 2 of the Act). That being so, a police personnel below the rank of Inspector (for easy reference hereinafter to be referred as the lesser officer), as long as he falls within the ambit of the definition of a police officer, may also without warrant arrest and detain any person under s. 73(1). The fact that the authority of the immediate respective extending senior officer, within the context of the relevant provision, is required for further detention, must surely mean that the effect of the detention undertaken by that lesser officer or the arresting officer is about to lapse. That construction is undisputable as unless the respective extending senior officer extends the detention period, that detainee is free to walk away unimpeded. It goes without saying that the authorised extension must be obtained before the expiry of the running detention period, as otherwise in the event of a break however slight, the resultant continued detention would contravene s. 73(3) of the Act.

With the lesser officer or arresting officer playing no more roles in the enquiry unless a lease of life were to be authorised by the respective extending senior officer, purposefully to abridge and legitimise the detention pending enquiries, any extension without satisfying the prerequisites of s. 73(1)(a) and (b) would be a mindless act. Unless the extending officer has applied his mind, how then is he to appreciate that the requirement of his authority was made in respect of a s. 8 matter as promulgated in crystal clear terms by the Act. It must be emphasised that when authorizing the extension, his prime consideration has to be the eventual justification of a detention of the detainee under s. 8, and for no other purpose.

But is there any other form of detention or purpose under s. 73? The answer is in the affirmative. A scrutiny of s. 73 will highlight that apart from s. 73(1), where a police officer may without warrant arrest and detain a person pending enquiries pursuant to the reasons provided therein, under s. 73(2) a police officer may act likewise, but for a totally different reason. Under s. 73(2) an arrest and detention may be undertaken pending enquiries of any person, who upon being questioned fails to satisfy the officer as to his identity or as to the purposes for which he is in the place where he is found, and who the officer suspects has acted or is about to act in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof. Clearly these two sub-sections have been promulgated for different purposes, and subject to different treatments. The detention of a person for a period not exceeding sixty days under s. 73(3) clearly does not apply to a s. 73(2) detention pending enquiries, as the former provision in succinct terms provide that any arrested person "may be detained for a period not exceeding sixty days without an order of detention having been made in respect of him under s. 8." The reference and delineation to s. 8 is only found in s. 73(1).

To convince me that the respective extending senior officer did apply his mind, some evidence without fail must be made available for my perusal and consideration. As the matter before me is affidavit-based, the source of that evidence if any, must surely be the very affidavits supplied by the respondents. For this we have to be thankful to s. 366 of the Criminal Procedure Code, which is an enactment of the English practice. I begin with encl. 12, ie, the affidavit affirmed by one Inspector Razali a/l Selvaraju, and the relevant portion reads:

> 3. Pada 18.4.2002 jam 10.45 malam saya telah memberi kuasa penahanan ke atas orang tahanan bernama NASHARUDDIN BIN NASIR (No. KP 571125-05-5195 (selepas ini di sebut sebagai "Pemohon") di lanjutkan melebihi 24 jam lagi mulai 18.4.2002 jam 11.55 malam, suatu kuasa yang di berikan kepada saya di bawah peruntukan seksyen 73(3) Akta Keselamatan Dalam Negeri 1960 kerana saya berpuas hati bahawa siasatan yang di perlukan di bawah seksyen 73 Akta yang sama tidak dapat di sempurnakan dan perlu di teruskan.

(Translation – On 18 April 2002 at about 10.45pm I had granted the authority of detention on one Nasharuddin bin Nasir (KP 571125-05-5195) (hereinafter referred to as the "applicant") to be extended for more than 24 hours effective 18 April 2002 at 11.55pm, pursuant to the powers given to me under s. 73(3) of the Internal Security Act 1960 as I was satisfied that the investigation required under s. 73 could not be concluded and must be continued.)

A perusal of the above paragraph, or for that matter the full text of encl. 12, satisfied me for starters that no mention of the requirements of s. 73(1)(a) and (b) of the Act was made when authorizing the extension. With the exception of the dates and time, encls. 9 and 11, which were affirmed by Acting Deputy Superintendent of Police Yusof bin Mohd Amin and Assistant Superintendent Mok Kai Mung, and attested in similar fashion to encl. 12, had also failed to attest those requirements. These two officers, together with Inspector Razali, merely said that the extensions were granted, as investigations were still required under s. 73 (see eg, encl. 12 exh. RS1).

With reference to the last remark, surely the grounds adverted to by them for the extensions, went outside the scope or beyond the ambit of s. 73(3). To reiterate and as clarified above:

a. the applicant was indisputably arrested pursuant to s. 73(1) ie, with a detention in mind under s. 8 of the Act and not of s. 73(2) (see encl. 10 as per exh. CK1); and

b. s. 73 covers two different types of detention.

On that interpretation, it must be concluded that as the authorisation of the extension was granted, on the premise of an investigation still progressing under s. 73, either by juxtaposition and or by the wide berth of s. 73, s. 73(2) must have been included in their consideration. To import unrelated factors when extending that detention order will surely prejudice the interest of the detainee. It could certainly be implied that due to the insufficiency of reasons, unrelated matters necessitated importation by the respondents, to justify the further detention. Lest it be forgotten, the power to authorize any extension was statutorily designed with s. 8 in mind, and the inclusion of unrelated matters would certainly be beyond their jurisdictional powers. That being so, with the premises of Inspector Rizal, Assistant Superintendent Mok Kai Mung and Acting Deputy Superintendent of Police Yusof bin Mohd Amin not falling squarely within the scope of s. 73(3) of the Act, their exercise of the authority to extend the detentions were flawed at the outset.

A second major flaw, detected is the failure to identify specifically the purpose of the extension. This flaw on its own had also spelt absolute disaster to the legal status of the detention. For purposes of analogy permit me to pluck out the views of the High Court in *Mohamed Ezam Mohd Noor v. Ketua Polis Negara and Other Appeals* where [2001] 3 CLJ 198 HC at p. 218, para d it had opined:

> Pursuant to s. 73(1) (b) of the ISA, the **specific purpose of the detention must be identified**. A setting out in full of the language in s. 8(1) of the ISA would be fatal as it would result in the specific purpose of the detention not being identified and would also render s. 73(1)(b) superfluous (emphasis added).

Even though the language of s. 73 was not set out in full in the authorization document, which would have certainly drawn flak, but enough on its own to taint the impugned order, the failure to identify the specific purpose of the extension had exacerbated matters for the respondents. Here either the officers had mechanically signed the authorization document to extend the detention period pursuant to their powers, or an unpardonable mistake but not rectified, had been committed. Whichever way one looks at it, the benefit of the doubt must tilt in favour of the applicant, as any detention not in accordance with the law must be struck down (*Andrew Thamboosamy v. Superintendent of Pudu Prison* [1976] 2 MLJ 156); *Public Prosecutor v. Koh Yoke Koon* [1988] 2 MLJ 301; *Tan Hoon Seng v. Minister for Home Affairs, Malaysia & Anor* [1990] 1 CLJ 423; [1990] 1 CLJ (Rep) 271).

Interestingly enough a scrutiny of encl. 7, an earlier affidavit signed by the Inspector-General, in succinct terms had capably attested that he had reasons to believe that there were grounds, which would justify the detention under s. 8 of the Act. That being so his affidavit on that specific issue was beyond reproach. If the three respective extending senior officers had meant to convey the same message similar to that of their superior, it was beyond me why they likewise could not have produced affidavits that carried the same style and contents for purposes of the extensions. There would have been no flaws if they had merely affirmed that the authority to detain the applicant further was granted as they had reasons to believe that there were grounds that would justify his detention under s. 8, and in the next line identify the specific purpose of the detention.

I now would like to broach the third flaw ie, whether the objective test enunciated by the Federal Court in *Mohamed Ezam Mohd Noor v. Ketua Polis Negara* had been faithfully adhered to by the arresting officer, when exercising his discretion under s. 73(1) of the Internal Security Act 1960. With regard to this matter, an appreciation of the remarks of Steve Shim CJ (Sabah & Sarawak) at p. 342 h of the above case would not be out of place. His Lordship had enunciated that:

Given the reasons stated above, I take the view that as the arrest and detention by the police officer entail the curtailment of the liberty of a subject involving, as I have said, a basic and fundamental right, his exercise of discretion under s. 73(1) is therefore subject to the objective test and thus reviewable by a court of law. The decision of the police is objectively justiciable. This means that the question whether a police officer has the required "reason to believe" when he makes the arrest and detention in reliance on s. 73(1) is objectively justiciable. The burden is on the police officer to satisfy the court that the preconditions constituting the said section which set out the jurisdictional threshold requisite to the exercise of arrest and detention have been complied with.

Returning to the mainstream, whether there was compliance or otherwise by the arresting officer, by necessity a perusal of his affidavit is imperative ie, encl. 10. The relevant portion for my consideration reads as follows:

4. Saya dengan sesungguhnya menyatakan daripada maklumat yang di terima berhubung dengan kegiatan orang tahanan bernama Nasharuddin bin Nasir No. KP 571125-05-5195 (selepas ini di sebut sebagai "pemohon"), saya mempunyai sebab untuk mempercayai bahawa terdapat alasan-alasan yang akan menjustifikasikan penahanan Pemohon di bawah seksyen 8 Akta Keselamatan Dalam Negeri 1960 (Akta 82).

5. Saya juga sesungguhnya mempunyai sebab untuk mempercayai pemohon telah bertindak mengikut apa-apa cara yang memudaratkan keselamatan Malaysia.

(Translation: 4. I verily say from information received pertaining to the activities of the detainee called Nasharuddin bin Nasir I.C No. 571125-05-5195 (hereinafter referred to as the "applicant"), I have reasons to believe that there are reasons to justify his detention under section 8 of the Internal Security Act 1960 (Act 82).

5. I verily have reasons to believe that the applicant had acted in ways that are prejudicial to the security of Malaysia).

A reading of CK3, which is a police report filed by the above arresting officer, one ASP Chang Kew, will likewise reveal that not only did it not detract from the language of the above affidavit in any material way, but was also devoid of material particulars. To be satisfied with mere assertions would imply submission to the archaic subjective test. To be fair to the respondents the above para. 4 of the affidavit, did sufficiently satisfy the requirements of s. 73(1)(a), but certainly not sub-s. (1)(b). Without any particulars disclosed indicating that the applicant had acted or was about to act or was likely to act in any manner prejudicial to the security of Malaysia etc. I could only conclude that the respondents had not discharged the requirements of the latter sub-section. With the failure of the

respondents to evidentially prove that the objective test had been applied, I thus must conclude that the respondents have fallen short of the current legal requirement. This third ground on its own would also have been sufficient to tarnish the legal status of the detention beyond redemption.

To allege that they were prevented from disclosing certain particulars, due to the inhibitive provision of s. 16 is an argument that will fall flat, and similarly outdated. To appreciate the matter under discussion better, I herewith reproduce the latter provision. It reads:

> Nothing in this Chapter or any rules made thereunder shall require the Minister or any member of the Advisory Board or any public servant to disclose facts or to produce documents which he considers it to be against the national interest to disclose or produce.

The Federal Court in *Mohamed Ezam Mohd Noor v. Ketua Polis Negara and Other Appeals* in ringing terms had expressed that the provisions of s. 16 of the Act are expressly applicable only in relation to Chapter 11, Part 11 of the same Act. As s. 73 falls under Part IV, s. 16 thus will be inapplicable.

With some not too careful officer having blemished the substantive procedural aspect of the detention exercise, it goes without saying that the eventual order issued by the Minister, must similarly be tainted (*Nik Adli bin Nik Abdul Aziz v. Ketua Polis Negara* [2002] 1 CLJ 161). If the roots are bad surely the fruits too will be bad. Some say that if the roots are bad there will be no trees let alone fruits.

Based on any one of the above three major reasons I have no hesitation in granting the *habeas corpus* order.